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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,220	10/28/2003	William R. Raap	07184-00049	4948
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DOWNS RACHLIN MARTIN PLLC 199 MAIN STREET P O BOX 190 BURLINGTON, VT 05402-0190				
			EXAMINER NGUYEN, SON T	
			ART UNIT 3643	PAPER NUMBER

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,220

Applicant(s)

RAAP ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

[Handwritten signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) 28-32 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-27, drawn to a device for planting bulbs, classified in class 47, subclass 73.
 - II. Claims 28-32, drawn to a method of selling bulbs, classified in class 705, subclass 500.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation. For example, invention I is for planting bulbs by placing the bulbs in the container as claimed and then transplanting the container with bulbs therein into the ground.

Invention II is for selling the bulbs in the container and not to be planted on the ground, thus, having different modes of operation, one for transplanting and the other for sale to customer.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Morgan Heller on 4/13/04 a provisional election was made without traverse to prosecute the invention of group I, claims 1-27.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-32 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

6. Claim 10 is objected to because of the following informalities: the dependency to claim 8 should be to claim 9, for an enhancer is not claimed in claim 8. For examining purpose, the examiner is considering the dependency to be to claim 9. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 1,4,11** are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2144613A (herein GB613).

For claim 1, GB613 teaches a device for planting a plurality of bulbs of plants 21, the device comprising: (a) a container 1 having an exterior and including a bottom wall

13 and a sidewall 4,2,3 extending upward from said bottom wall and defining an opening; and (b) a rodent deterrent 15,6 secured to at least a portion of said exterior of said container.

For claim 4, GB613 teaches wherein said rodent deterrent comprises seashell fragments (page 3, lines 44-47, lime is a plurality of seashell fragments).

For claim 11, GB613 teaches wherein the bulbs have roots and said wall is configured to allow the roots to penetrate therethrough when they grow (see fig. 2).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 2 & 3** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB613 (as above) in view of US 5675933 (herein 933).

933 teaches a device for planting bulbs of plants comprising a closure 43 having a plurality of apertures configured to receive therethrough the plants that sprout from the plurality of bulbs, the closure comprises a grid (see figs.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a closure with apertures as taught by 933 on the device of GB613 in order to protect the plants.

11. **Claims 5-8,12,14-17,19,24-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB613 (as above) in view of US 3958365 (herein 365).

For claims 5-8, 365 teaches a device for planting bulbs of plants comprising bottom and side walls made out of elongate biodegradable fibers such as coconut coir (col. 1, lines 41-45). In addition, the fibers are bonded to one another with a bonding agent such as latex rubber (col. 1, lines 47-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the walls of GB613 out of biodegradable material or fibers bonded together by a bonding agent such as latex rubber as taught by 365 so as to be environmentally friendly.

For claim 12, in addition to the above, GB613 teaches the plants being planted in a first soil (Earth) and a second soil 20. See claim 5 for explanation of the biodegradable fibers as taught by 365.

For claim 14, as explained in the above teaching by GB613, the rodent deterrent is ref. 6,15.

For claims 15-17, see claim 5.

For claim 19, GB613 as modified by 365 teaches wherein said plurality of bulbs have roots and said container is configured to allow said roots to penetrate therethrough when said roots grow (see fig. 2 of GB613).

For claim 24, GB613 teaches a method of planting a cluster of flowering bulb plants, comprising the step of: (a) providing an assembly comprising: (i) a container 1 that includes a preformed freestanding wall 4,2,3, said container having a cavity; (ii) a first soil 20 contained in said cavity; and (iii) a plurality of plant bulbs 21 planted in said first soil; and (b) planting said assembly in a second soil (Earth as shown in fig. 2).

However, GB613 is silent about the biodegradable material for the container.

365 teaches a device for planting bulbs of plants comprising bottom and side walls made out of elongate biodegradable fibers such as coconut coir (col. 1, lines 41-45). In addition, the fibers are bonded to one another with a bonding agent such as latex rubber (col. 1, lines 47-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the walls of GB613 out of biodegradable material or fibers bonded together by a bonding agent such as latex rubber as taught by 365 so as to be environmentally friendly.

For claim 25, GB613 as modified by 365 (emphasis on GB613) further teaches deterring a rodent from accessing said cavity by employing lime 15.

For claim 26, in addition to the above, 365 teaches providing a closure (col. 2, lines 58-60) on the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of providing a closure as taught by 365 on the device of GB613 in order to protect the plants grown therein from animals.

12. **Claims 9 & 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB613 (as above) in view of JP403266916A (herein JP916).

For claim 9, JP916 teaches a growth enhancer such as an antagonistic microbial material (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by JP916 in the device of GB613 in order to deteriorate the activity of noxious germs in the soil, thus, enhance the plant's growth.

For claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ fungus to rid of noxious germs in the device of GB613 as modified by JP916, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

13. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over GB613 as modified by 365 as applied to claim 12 above, and further in view of 933 (as above).

933 teaches a device for planting bulbs of plants comprising a closure 43 having a plurality of apertures configured to receive therethrough the plants that sprout from the plurality of bulbs, the closure comprises a grid (see figs.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a closure with apertures as taught by 933 on the device of GB613 as modified by 365 in order to protect the plants.

14. **Claims 18,20-22,27** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB613 as modified by 365 as applied to claim 12 above, and further in view of JP916 (as above).

For claim 18, JP916 teaches a growth-enhancer as explained above. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by JP916 in the device of GB613 as modified by 365 in order to deteriorate the activity of noxious germs in the soil, thus, enhance the plant's growth.

For claim 20, GB613 teaches the container as described above. 365 teaches the biodegradable material as described above. JP916 teaches the growth enhancer as described above. Therefore, the combination of GB613 as modified by 365 and JP916 teaches the claimed limitation of claim 20.

For claim 21, as explained above, lime is ground up seashells. Therefore, GB613 as modified by 365 and JP916 teaches ground-up seashells.

For claim 22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ fungus to rid of noxious germs in the device of GB613 as modified by 365 & JP916, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

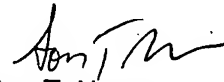
For claim 27, GB613 as modified by 365 & JP916 (emphasis on JP916) teaches releasing a growth enhancer from said container.

15. **Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over GB613 as modified by 365 & JP916 as applied to claim 20 above, and further in view of 933 (as above). See above for explanation.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
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stn